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Judge Rejects Cincinnati's Anti-Gun Lawsuit

Twenty-six municipalities have brought suit against the gun industry, demanding that manufacturers pay for costs incurred by the governments due to gun violence. Gun control advocates have thrown their support behind the lawsuits in the hope that litigation will achieve a level of gun regulation that legislatures have rejected.

To date, the only suit to be decided was brought by the city of Cincinnati, which demanded the industry "pay for the lessened property values and loss of taxpayer revenue caused by guns and crimes involving guns; pay punitive damages as a result of those crimes; and be forced to change gun designs, distribution and advertising policies across the country" [*Cincinnati Post*, 10/7/99].

Last week, Hamilton County Court of Common Pleas Judge Robert Ruehlman dismissed the city's suit. Though Judge Ruehlman's opinion has no impact on suits brought by other municipalities, it exposes the folly of holding gun manufacturers responsible for the actions of third parties and for regulating guns through the courts. One can only hope the plaintiffs in the other cases will notice and ponder the wisdom of this opinion. Excerpts of the opinion follow:

On regulating through the courts: "In the view of this Court, the City's complaint is an improper attempt to have this Court substitute its judgment for that of the legislature, something which this Court is neither inclined nor empowered to do. Only the legislature has the power to engage in the type of regulation which is being sought by the City here. Moreover, the City's request that this Court abate or enjoin the defendants' lawful sale and distribution of their products outside the City of Cincinnati exceeds the scope of its municipal powers and, to the extent it asks this Court to regulate commercial conduct lawful in other states, violates the Commerce Clause of the United States Constitution."

On making manufacturers subject to strict liability: "Rather than identifying a specific product, a specific defect, an identified manufacturer, and a specific injury with a causal connection, as the City acknowledges is required . . . the complaint instead aggregates anonymous claims with no specificity whatsoever. . . . Further, neither the law of Ohio nor any other jurisdiction of which the Court is aware permits recovery in strict liability for the intentional use of a product to accomplish an intended result[.]"

On making manufacturers subject to collective liability: "To the extent the City pursues a theory of collective liability, no recognized theory of collective liability under Ohio law applies in these circumstances."

On manufacturers' failure to warn of the risks of guns: "The Court finds as a matter of law that the risks associated with the use of a firearm are open and obvious and matters of common knowledge."

On manufacturers' responsibility for the criminal use of guns: "[U]nder Ohio law, in order to hold a defendant liable in negligence for the criminal conduct of a third party, the defendant must owe a duty arising out of a special relationship between the defendant and the third party giving rise to an ability to control the conduct of that third party, or there must be a special relationship which requires the defendant to protect the plaintiff. . . . Absent that special relationship — which does not exist here — there is no duty under Ohio law."

"Furthermore, a party cannot be held liable in nuisance absent control of the activity which creates or maintains the nuisance. Here the nuisance is the criminal or reckless misuse of firearms by third parties who are beyond the control of the defendants. Because defendants have no ability to control the misconduct of these third parties, nuisance does not apply for that reason as well."

On manufacturers having committed fraud by claiming "home ownership of guns increase[s] home safety and security": "[T]he statement set out is merely a statement of opinion of future events which does not constitute fraud under Ohio law. Indeed, the statement can be construed to simply reflect that which is set forth under the Ohio Constitution and the laws of the State of Ohio, which recognize the legitimate use of firearms for self-defense."

On the relationship between citizens and a municipality: "[A]s a matter of law, the City's payments [for police, etc.] arose out of its duties to its citizens and were not a benefit conferred on the defendants. . . . In addition, absent statutory authorization, the City may not recover for expenditures for ordinary public services which it has the duty to provide."

In short, the lawsuit was a politically motivated attack on the Second Amendment and the right to self-defense, a plea for the judiciary to subvert the legislative process and the U.S. Constitution, a ploy by the trial bar to shake down another industry, and an attempt to blame gun manufacturers for the municipal authority's failure to protect its people.

[Sources: *City of Cincinnati vs. Beretta U.S.A. Corp., et. al.*, Court of Common Pleas, Hamilton County, Ohio; Case No. A9902369, filed 10/7/99]

RPC Staff Contact: Michael F. Cannon, 224-2946